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No. 91 - 1657

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

CHARLENE LEATHERMAN, et al.,

PETITIONERS,

VS.

TARRANT COUNTY NARCOTICS INTELLIGENCE
AND COORDINATION UNIT, et al.,

RESPONDENTS.

On Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

BRIEF AMICUS CURIAE OF THE TEXAS MUNICIPAL
LEAGUE
AND THE TEXAS CITY ATTORNEYS ASSOCIATION
IN SUPPORT OF RESPONDENTS

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QUESTIONS PRESENTED

1. May a complaint against a local government entity brought under 42 U.S.C. sec. 1983 be dismissed for failure to plead specific factual allegations supporting governmental liability?

a. Whether dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure of an action brought pursuant to 42 U.S.C. sec. 1983 based upon a "heightened pleading" requirement is violative of Rule 8 of the Federal Rules of Civil Procedure or the Rules Enabling Act, 28 U.S.C. sec. 2072(b)?

b. Whether dismissal of a complaint is proper under Rule 12(b)(6), on the grounds that it contains only conclusory allegations that track the requirements of a cause of action, unaccompanied by any notice as to the facts upon which the claim is allegedly based?

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INTEREST OF AMICI CURIAE

The Texas Municipal League is a nonprofit association of over 960 Texas municipalities. The Texas City Attorneys Association, an affiliate of the Texas Municipal League, is an organization of attorneys who represent Texas municipalities. Amici curiae have a vital interest in this case because the decision of this Honorable Court has the potential for altering the heightened pleading requirement necessary to subject municipalities and other governmental entities to Section 1983 causes of action.

Amici Curiae respectfully submit this brief in support of the Respondents.

Pursuant to Rule 37.3 of the Rules of this Court, the parties have consented to the filing of this brief amicus curiae. The parties' written consent documents have been filed with the Clerk of the Court.

SUMMARY OF THE ARGUMENT

The decision of the Fifth Circuit Court of Appeals to affirm the district court's dismissal of the Petitioners' complaint in this cause of action should be upheld. The Petitioners' complaint failed to base their allegations of the existence of an unconstitutional policy upon any facts or evidence. Such a failure does not satisfy the Fifth Circuit's heightened pleading requirements in Section 1983 actions.

The district court's dismissal of Petitioners' complaint is consistent with Rule 8 of the Federal Rules of Civil Procedure. The Petitioners simply failed to show that they were entitled to relief in this cause of action because they did not disclose any facts upon which to base their claim that an unconstitutional policy caused their alleged injuries.

Applying a heightened pleading requirement to Section 1983 actions does not violate the Rules Enabling Act because such a requirement merely imposes a procedural requirement that must be satisfied before the plaintiffs are allowed to subject the defendants to full-blown litigation.

ARGUMENT

A municipality may only be liable under Section 1983 "where ... the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." Monell v. Department of Social Services, 436 U.S. 658, 690 (1978). Additionally, a municipality cannot be held liable under a theory of *respondeat superior*. Monell, at 691. "A local government may not be sued under Section 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under Section 1983." Monell, at 694, 98 S.Ct. at 2037. A single act may

be sufficient to impose liability on the part of the municipality only if the decision to adopt a particular course of action is made by that government's authorized policy makers. Pembaur v. Cincinnati, 475 U.S. 469 (1986). Inadequate police training can serve as the basis for liability only where the failure to train amounts to deliberate indifference by city policymakers to the constitutional rights of persons contacted by police officers. City of Canton, Ohio v. Harris, 109 S.Ct. 1197 (1989).

The plaintiffs in the case at hand have pled the elements of a Section 1983 inadequate training cause of action. However, the plaintiffs failed to plead the existence of any facts or evidence that support the conclusory allegations contained in the plaintiffs' complaint. For sound reasons, the Fifth Circuit has consistently held that a Section 1983 cause of action must be pled on specific facts and not merely conclusory allegations. Palmer v. San Antonio, 810 F.2d 514 (5th Cir. 1987); Elliot v. Perez, 751 F.2d 1472 (5th Cir. 1985). Such a requirement applies to actions against governmental entities as well as actions against public officials. Palmer v. San Antonio, 810 F.2d at 516. "... [T]he assertion of a single incident is not sufficient to show that a policy or custom exists on the part of a municipality." Palmer, 810 F.2d at 516-517, citing Bennett v. City of Slidell, 728 F.2d 762 (5th Cir. 1984) (en banc), cert. denied, 472 U.S. 1016, 105 S.Ct. 3476, 87 L.Ed. 2d 612 (1985). Without a showing of the existence of an unconstitutional policy of a municipality, a municipality, as a sovereign entity, is immune from suit as well as liability. See Owen v. City of Independence, 445 U.S. 621 (1980). In

discussing the reasons for extending the heightened pleading requirement to causes of action against public entity defendants, the Fifth Circuit stated that:

in view of the enormous expense involved today in litigation, ... the heavy cost of responding to even a baseless legal action, and of Rule 11's new language requiring reasonable inquiry into the facts of the case by an attorney *before* he brings an action, applying the stated rule to all section 1983 actions has much to recommend it.

Rodriguez v. Avita, 871 F.2d 552, 554 (5th Cir. 1989), *cert. denied*, 493 U.S. 854, 110 S.Ct. 156, 107 L.Ed.2d 114 (1989). Discussions of other courts regarding the heightened pleading requirements in actions against public officials are also instructive. As the court stated in Elliot v. Perez, "... allowing broadly worded complaints, such as those of the plaintiffs here, which leaves to traditional pretrial depositions, interrogatories, and requests for admission the development of the real facts underlying the claim, effectively eviscerates important functions and protections of official immunity." Elliot v. Perez, 751 F.2d at 1476.

Other courts have also articulated persuasive reasons for upholding the special pleading requirements in Section 1983 cases. The Seventh Circuit, for example, imposes a special pleading requirement in Section 1983 cases brought under Monell. In Strauss v. City of Chicago, the Court of Appeals for the Seventh Circuit held:

A complaint that tracks Monell's requirement of official policy with bare allegations cannot stand when the policy identified is nothing more than acquiescence in prior misconduct. The absence of any facts at all to support plaintiff's claim renders the allegations mere legal conclusions of Section 1983 liability devoid of any well-pleaded facts ... To allow otherwise would be tantamount to allowing suit to be filed on a *respondeat superior* basis. Plaintiffs could file claims whenever a police officer abused them, add Monell boilerplate allegations, and proceed to discovery in the hope of turning up some evidence to support the "claims" made.

Strauss v. City of Chicago, 760 F.2d 765, 767-768 (7th Cir. 1985).

The Seventh Circuit, therefore, held that to state a claim under Monell a complaint must specify at least some evidence that proved the existence of a policy that led to the injuries complained of by the plaintiff:

The existence of a policy that caused a plaintiff's injury is an essential part of Section 1983 liability, so that some fact indicating the existence of some such policy must be pled. Without some evidence ... regardless how slight, that a policy caused plaintiff's injury,

the plaintiff simply cannot proceed in court against the municipality.

Strauss, 760 F.2d at 768.

Other circuit courts, as well as the Fifth and Seventh Circuits, have required more than conclusory allegations of a municipal practice or policy, and more than pleadings that do little more than parrot the language of Monell. See e.g., Santiago v. Fenton, 891 F.2d 373 (1st Cir. 1989); Ricciuti v. New York City Transit Authority, 941 F.2d 119 (2d Cir. 1991); Bartholomew v. Fischel, 782 F.2d 1148 (3d Cir. 1986); Revene v. Charles County Commissioners, 882 F.2d 870 (4th Cir. 1989); Munz v. Parr, 758 F.2d 1254 (8th Cir. 1985). The plaintiff must allege facts that support the existence of a policy or custom. "Boilerplate allegations of a municipal policy, entirely lacking in any factual support that a city policy does exist, are insufficient." Rodgers v. Lincoln Towing Service, Inc., 771 F.2d 194, 202 (7th Cir. 1985). A bare allegation of a municipal policy or custom may generate far-reaching discovery, and "neither a federal court nor a municipality should be burdened with such an action unless a detailed pleading is presented." Smith v. Ambrogio, 456 F.Supp. 1130, 1137 (D.Conn. 1978). The plaintiffs' complaint in the case under consideration failed to sufficiently establish the existence of an unconstitutional municipal policy, therefore the complaint was properly dismissed under Federal Rule of Civil Procedure 12(b).

Rule 8 of the Federal Rules of Civil Procedure provides in pertinent part:

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counter-claim, cross-claim, or third-party claim, shall contain ...

(2) a short and plain statement of the claim showing that the pleader is entitled to relief, ...

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(f) Construction of Pleadings.

All pleadings shall be so construed as to do substantial justice.

The Fifth Circuit's dismissal is consistent with Federal Rule of Civil Procedure 8. Rule 8 requires a plaintiff to make a statement of the claim showing that the complainant is entitled to relief. The plaintiffs failed to show that they were entitled to relief in this cause of action in that they omitted any specific facts or evidence required to show the existence of a municipal policy that caused their alleged injuries. Such a failure does not, as Rule 8 requires, put the defendants on notice of the claim asserted by the plaintiffs. Conclusory allegations parroting the language of Monell have properly and consistently been held to fail to state a claim under Rule 8.

The Rules Enabling Act, Title 28, United States Code, Section 2072, provides in pertinent part:

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right.

Applying a special pleadings requirement to Section 1983 actions does not "abridge" any substantive right of the plaintiffs. The heightened pleadings requirement merely imposes a procedural element that must be satisfied before the plaintiffs are allowed to subject the defendants to burdens of full-blown litigation.

Dismissal of Section 1983 claims that fail to state a claim with particularity under Rule 12(b)(6) is not only consistent with Rule 8 and the Rules Enabling Act, but significant public policy reasons demand such a practice by the federal courts. Non-meritorious claims must be dismissed to conserve the scarce judicial resources for those claims that are meritorious. Additionally, the fiscal resources of our governmental entities, ultimately financed by the public at large, must be conserved by minimizing defense costs attributable to non-meritorious claims. Allowing the dismissal of complaints that fail to state a claim is the method that properly advances these public policy goals.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals for the Fifth Circuit should be affirmed.

Respectfully submitted,

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